

# **EXHIBIT R**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY MDL No. 1456  
AVERAGE WHOLESALE PRICE Master File No.  
LITIGATION 01-CV-12257-PBS

THIS DOCUMENT RELATES TO:

United States of America, ex rel.  
Ven-A-Care of The Florida Keys,  
Inc., et al. vs. Boehringer  
Ingelheim Corporation, et al.,  
Civil Action No. 07-10248-PBS

(Captions continued on following pages.)

VIDEOTAPED DEPOSITION OF PAUL CHESSER, a  
Witness, taken on behalf of the Defendants, before  
Robin Prouty, CCR No. 868, pursuant to Notice on the  
24th day of June, 2008, at the offices of Kutak  
Rock, LLP, 124 West Capitol Avenue, Suite 2000,  
Little Rock, Arkansas.

Chesser, Paul

June 24, 2008

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<p>1 IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA</p> <p>2</p> <p>3 In the Matter of:</p> <p>4 ALABAMA MEDICAID PHARMACEUTICAL</p> <p>5 AVERAGE WHOLESAL PRICE</p> <p>6 LITIGATION Master Docket No.</p> <p>7 CV-2005-219</p> <p>8 This Document Relates to:</p> <p>9 State of Alabama v. Abbott</p> <p>10 Laboratories, Inc.,</p> <p>11 No. 2005-219.01</p> <p>12 State of Alabama v. Agouron</p> <p>13 Pharmaceuticals, Inc.</p> <p>14 No. 2005-219.02</p> <p>15 State of Alabama v. Alcon</p> <p>16 Laboratories, Inc.</p> <p>17 No. 2005-219.03</p> <p>18 State of Alabama v. Allergan,</p> <p>19 Inc.</p> <p>20 No. 2005-219.04</p> <p>21 State of Alabama v. Alpharma,</p> <p>22 Inc.</p>	<p>1 State of Alabama v. Baxter</p> <p>2 Healthcare Corporation,</p> <p>3 No. 2005-219.15</p> <p>4 State of Alabama v. Baxter</p> <p>5 International, Inc.</p> <p>6 No. 2005-219.16</p> <p>7 State of Alabama v. Bayer</p> <p>8 Corporation,</p> <p>9 No. 2005-219.17</p> <p>10 State of Alabama v. Bayer</p> <p>11 Pharmaceuticals Corporation</p> <p>12 No. 2005-219.18</p> <p>13 State of Alabama v. Bayer</p> <p>14 Healthcare, LLC</p> <p>15 No. 2005-219.19</p> <p>16 State of Alabama v. Biovail</p> <p>17 Pharmaceuticals, Inc.,</p> <p>18 No. 2005-219.20</p> <p>19 State of Alabama v. Boehringer</p> <p>20 Ingelheim Corporation</p> <p>21 No. 2005-219.21</p> <p>22 State of Alabama v. Boehringer</p>
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<p>1 No. 2005-219.05</p> <p>2 State of Alabama v. Alza</p> <p>3 Corporation</p> <p>4 No. 2005-219.06</p> <p>5 State of Alabama v. Amgen,</p> <p>6 Inc.</p> <p>7 No. 2005-219.07</p> <p>8 State of Alabama v. Andrx</p> <p>9 Corporation,</p> <p>10 No. 2005-219.08</p> <p>11 State of Alabama v. Andrx</p> <p>12 Pharmaceuticals, Inc.</p> <p>13 No 2005-219.09</p> <p>14 State of Alabama v. Aventis</p> <p>15 Pharmaceuticals, Inc.</p> <p>16 No. 2005-219.12</p> <p>17 State of Alabama v. Aventis</p> <p>18 Behring, LLC,</p> <p>19 No. 2005-219.13</p> <p>20 State of Alabama v. Barr</p> <p>21 Laboratories, Inc.,</p> <p>22 No. 2005-219.14</p>	<p>1 Ingelheim Pharmaceuticals, Inc.</p> <p>2 No. 2005-219.22</p> <p>3 State of Alabama v. Bristol-Myers</p> <p>4 Squibb Company</p> <p>5 No. 2005-219.23</p> <p>6 State of Alabama v. Eisai, Inc.,</p> <p>7 No. 2005-219.25</p> <p>8 State of Alabama v. Eli Lilly &amp;</p> <p>9 Company</p> <p>10 No. 2005-219.26</p> <p>11 State of Alabama v. Endo</p> <p>12 Pharmaceuticals, Inc.</p> <p>13 No. 2005-219.27</p> <p>14 State of Alabama v. Ethex</p> <p>15 Corporation</p> <p>16 No. 2005-219.28</p> <p>17 State of Alabama v. Forest</p> <p>18 Laboratories, Inc.</p> <p>19 No. 2005-219.29</p> <p>20 State of Alabama v. Forest</p> <p>21 Pharmaceuticals, Inc.</p> <p>22 No. 2005-219.30</p>

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<p style="text-align: right;">Page 154</p> <p>1 concerns still had to do with they didn't want  2 somebody who was not up to speed in this area to  3 look at this report and draw conclusions that were  4 not merited.  5 Q. Now, these other areas that are outlined in  6 this -- in this paragraph, such as contribution of  7 the Medicaid business to other store sales and  8 dispensing costs, did HCFA ever request that you  9 analyze these particular factors in reimbursement  10 under Medicaid?  11 A. Not that I'm aware of.  12 Q. Do you recall any effort by OIG taken on  13 its own accord to look at these other factors laid  14 out in this paragraph?  15 A. Not that I'm aware of.  16 Q. Would the Region 6 office be the office  17 that would have conducted these additional audits on  18 these additional topics?  19 MR. DRAYCOTT: Objection, time frame.  20 Q. (By Mr. Heck) You can answer.  21 A. It's conceivable that at some point here --  22 and I would be unaware of that OEI might have done</p>	<p style="text-align: right;">Page 156</p> <p>1 that's why it's two stage, multistage.  2 Q. Do you know who would have conducted that  3 process of picking the states and the pharmacies?  4 A. It would have been random numbers  5 generated.  6 Q. And do you know who would have overseen  7 that process of the random number generator?  8 A. I would have done the random numbers using  9 the software that we have.  10 Q. When you say random numbers, you  11 indicated -- were the states selected by a random  12 number --  13 A. Yes.  14 Q. -- generator? Just generally, how did that  15 process work?  16 A. I don't remember exactly. You've got 50  17 states and the District of Columbia. Did we exclude  18 any? Arizona was excluded because -- and Tennessee  19 was excluded. So you really had 49 states and the  20 District. So we took -- I probably put them in  21 alphabetical order, if I'm guessing right, and  22 assigned them each a number, and then pulled a</p>
<p style="text-align: right;">Page 155</p> <p>1 something that might have touched one of these areas  2 in some of their studies, but I am not aware of it.  3 Q. And you indicated that up until recently,  4 OEI generally focused on Medicare work, correct?  5 A. Correct.  6 Q. So are you aware of any effort that OEI  7 took to look at Medicaid dispensing fees or the  8 contribution of Medicaid business to other store  9 sales?  10 MR. DRAYCOTT: Objection, asked and  11 answered.  12 Q. (By Mr. Heck) I'm asking if OEI ever. Are  13 you aware of any?  14 A. I'm not aware.  15 Q. Okay. Now, if we move to the next  16 paragraph, it indicates there was a multistate -- or  17 I'm sorry, multistage sampling procedure. Do you  18 know what's meant by that?  19 A. I am not a state sampling expert, but it's  20 because we pulled samples within -- we pulled a  21 sample of states, and within the states, we pulled a  22 stratified sample of pharmacies in each stage. So</p>	<p style="text-align: right;">Page 157</p> <p>1 random sample of 12 from the universe of 50.  2 Q. And why did you select the states in this  3 manner?  4 A. So -- so it would be random and  5 statistically valid.  6 Q. So it's your understanding that you  7 selected states randomly in order to ensure a  8 nationwide -- a valid nationwide sample; is that  9 correct?  10 A. Correct.  11 Q. Now, it says here that 11 states were  12 examined -- I guess 10 states and the District of  13 Columbia. That number was originally 12, correct?  14 A. Correct.  15 MR. HECK: Mark an exhibit.  16 (Whereupon, Exhibit Roxane 080  17 was marked for identification by the reporter.)  18 MR. HECK: We're at 80 already? This  19 is Roxane 80.  20 Q. (By Mr. Heck) Now, can you take a moment  21 to just quickly look at this document?  22 A. Okay.</p>

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

- - - - -x  
IN RE: PHARMACEUTICAL INDUSTRY : MDL NO. 1456  
AVERAGE WHOLESALE PRICE LITIGATION : CIVIL ACTION  
THIS DOCUMENT RELATES TO: : 01-CV-12257-PBS  
United States of America ex rel. :  
Ven-a-Care of the Florida Keys, :  
Inc., v. Boehringer Ingelheim :  
Corp., et al., Civil Action No. :  
07-10248-PBS and United States of :  
America, ex rel. Ven-A-Care of the : Hon. Patti B.  
Florida Keys, Inc., v. Abbott : Saris  
Laboratories, Inc., Civil Action :  
Nos. 06-11337-PBS and :  
07-CV-11618-PBS :  
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(CROSS NOTICED CAPTIONS ON FOLLOWING PAGES)

Washington, D.C.

Tuesday, October 28, 2008

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<p>1 CAUSE NO. D-1-GV-07-001259 2 -----x IN THE DISTRICT COURT 3 THE STATE OF TEXAS, : 4 ex. rel : 5 VEN-A-CARE OF THE FLORIDA : 6 KEYS, INC. : TRAVIS COUNTY, TEXAS 7 Plaintiffs, : 8 v. : 9 SANDOZ, INC., f/k/a GENEVA : 10 PHARMACEUTICALS, INC., EON : 11 LABS, MYLAN : 12 PHARMACEUTICALS, INC., MYLAN : 201ST JUDICIAL DISTRICT 13 LABORATORIES, INC., UDL : 14 LABORATORIES, INC., TEVA : 15 PHARMACEUTICALS USA, INC., : 16 f/k/a LEMMON PHARMACEUTICALS, : 17 INC., COPLEY PHARMACEUTICALS, : 18 INC., IVAX PHARMACEUTICALS, : 19 INC., SICOR PHARMACEUTICALS, : 20 INC., and TEVA NOVOPHARM, INC.,: 21 Defendants. : 22 -----x</p>	<p>1 APPEARANCES: 2 3 On behalf of Boehringer Ingelheim and Roxane: 4 JARED T. HECK, ESQ. 5 Kirkland &amp; Ellis LLP 6 200 East Randolph Drive 7 Chicago, IL 60601 8 (312) 861-3452 9 10 On behalf of Dey LP, Inc., Dey LP, Dey, Inc., 11 Mylan, Inc., and Mylan Pharmaceuticals: 12 MICHAEL J. MALONEY, ESQ. 13 Kelley Drye &amp; Warren LLP 14 101 Park Avenue 15 New York, NY 10178 16 (212) 808-7697 17 18 19 20 21 22</p>
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<p>1 Continued Videotaped Deposition of PAUL CHESSER, 2 a witness herein, called for examination by counsel 3 for Roxane in the above-entitled matter, pursuant to 4 notice, the witness being duly sworn by SUSAN L. 5 CIMINELLI, a Notary Public in and for the District of 6 Columbia, taken at the offices of Kirkland &amp; Ellis, 7 655 Fifteenth Street, N.W., Washington, D.C., at 9:16 8 a.m., and the proceedings being taken down by 9 Stenotype by SUSAN L. CIMINELLI, CRR, RPR, and 10 transcribed under her direction. 11 12 13 14 15 16 17 18 19 20 21 22</p>	<p>1 APPEARANCES CONTINUED: 2 3 On behalf of Bristol-Myers Squibb: (Via phone) 4 DIANNE M. PETERSON, ESQ. 5 Hogan &amp; Hartson LLP 6 875 Third Avenue 7 New York, New York 10022 8 (212) 918-3000 9 10 On behalf of Abbott Laboratories: 11 R. CHRISTOPHER COOK, ESQ. 12 Jones Day 13 51 Louisiana Avenue, N.W. 14 Washington, D.C. 20001-2113 15 (202) 879-393 16 17 18 19 20 21 22</p>

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1 Q. Now, if we go to the second paragraph, it  
2 describes this multistage sampling procedure. I  
3 think we went into this last time, but can you just  
4 run me through what's meant by multistage sampling  
5 procedure?

6 A. Well, the different stage -- the first  
7 stage were the states. And then within each state,  
8 we selected different strata, rule changes and rule  
9 independence, everything changed, and then within  
10 each stratum, we selected a sample of pharmacies. So  
11 three stages.

12 Q. Well, with regard to that second strata,  
13 why did you look at the various types of pharmacies  
14 differently?

15 A. Why did we stratify on the rural, the  
16 urban, the chain and independent?

17 Q. Correct, why did you do that?

18 A. I think that primarily stemmed from the  
19 reviews that were done probably the one in '84. Bill  
20 Shrigley was still involved in that, and that was  
21 part of the criticism I believe he said of that  
22 review was that you didn't take into consideration

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1 that the pharmacy in the middle of Montana is at a  
2 disadvantage compared to one in New York City.

3 Q. So something -- let me start again. Based  
4 on the 1994 audit, there was some concern that  
5 pharmacies at different levels, whether rural or  
6 urban, or chain or independent, that they could  
7 obtain drugs at different costs from the other types  
8 of pharmacies, is that correct?

9 A. No. Based on the '84 audit. The -- the  
10 original audit.

11 Q. Did I say '94?

12 A. Yes.

13 Q. Okay. So after the 1984, there was some  
14 concern that you did not express the results in terms  
15 of these various different types of pharmacies in  
16 different locales, is that correct?

17 A. Correct.

18 Q. Because there is an understanding that  
19 state -- that various types of pharmacies, whether  
20 geographically or chain versus independent, they  
21 could obtain drugs at different discounts from AWP,  
22 is that right?

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1 A. Correct.

2 Q. And this is the reason you provided the  
3 similar stratification for the 1994 audit, correct?

4 A. Yes.

5 Q. And you continued to stratify based on  
6 this for this 1999 audit, is that right?

7 A. Yes.

8 Q. Now, last time you indicated -- let's step  
9 back. How -- when you received invoices from the  
10 pharmacies that were ultimately selected, how did you  
11 determine which drugs you would look at on those  
12 invoices?

13 A. We looked at every drug.

14 Q. And every drug from those invoices that  
15 you happen to receive would be included in the  
16 analysis for the discount of AWP, correct?

17 A. Yes. Unless we at some point were unable  
18 to identify an AWP.

19 Q. And where did you acquire those AWP's?

20 A. The State of Florida provided us with the  
21 price -- I think they contracted with First DataBank.

22 Q. So was this a computer program or was this

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1 a book?

2 A. It was an Access database file.

3 Q. So this Access database file from First  
4 DataBank, if you could find an AWP in that file that  
5 corresponded to the line item on an invoice, you  
6 would consider that or you would incorporate that  
7 drug or that invoice into the study, correct?

8 A. Yes.

9 Q. Is it accurate that you didn't exclude any  
10 particular types of drugs from the analysis that you  
11 were performing?

12 A. We didn't include any over the counter  
13 products.

14 Q. But if it was a legend drug or a  
15 prescription drug, you would have included that in  
16 this study, correct?

17 A. And we had a price for it.

18 Q. And if you had an AWP price for it,  
19 correct?

20 A. Correct.

21 Q. And is it also accurate that you didn't  
22 exclude any manufacturer's drugs in particular from

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<p>1 MR. BEIMERS: Objection.</p> <p>2 THE WITNESS: I have no idea. I mean,</p> <p>3 it's -- maybe unusual is not the right word, but --</p> <p>4 BY MR. COOK:</p> <p>5 Q. Surprising?</p> <p>6 A. Maybe.</p> <p>7 Q. Why would it be surprising?</p> <p>8 A. Because we don't have a -- we don't issue</p> <p>9 press -- I guess we do issue press releases, but it's</p> <p>10 not typical to do it by the start of an audit. It's</p> <p>11 more -- you typically see a press release announcing</p> <p>12 the results of, you know --</p> <p>13 Q. Now, the information contained in this</p> <p>14 magazine article in November of 1994, that</p> <p>15 information would have been available from someone</p> <p>16 from OIG, some people at CMS, correct?</p> <p>17 A. The 11 states that participated in the --</p> <p>18 Q. That was my next question. It also would</p> <p>19 have been available from the various people who you</p> <p>20 met with in August of 1994 in Richmond, Virginia,</p> <p>21 right?</p> <p>22 A. Correct.</p>	<p>1 Q. Now, as the study went forward, by the</p> <p>2 nature of the methodology that you used, there were</p> <p>3 in each state, 60 pharmacies that became aware of the</p> <p>4 study that OIG was doing, correct?</p> <p>5 A. Yes.</p> <p>6 Q. You indicated in your first day of</p> <p>7 deposition that you received lots of calls from these</p> <p>8 pharmacies, do you recall that?</p> <p>9 A. Sure.</p> <p>10 Q. Your name was in the letter, and your</p> <p>11 telephone number, as I recall, that went to these</p> <p>12 pharmacies, right?</p> <p>13 A. Correct.</p> <p>14 Q. When you spoke to these pharmacies, do you</p> <p>15 have any recollection of specific conversations that</p> <p>16 you had with any of these pharmacies?</p> <p>17 A. I don't know that I remember specific</p> <p>18 conversations. I do remember that -- a lot of</p> <p>19 questions related to do we have to do this.</p> <p>20 Q. What was your answer to those who asked</p> <p>21 whether you had to do this?</p> <p>22 A. I always told them we believed that they</p>
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<p>1 Q. And there is nothing particularly secret</p> <p>2 about the information that's contained in this</p> <p>3 newspaper article, right?</p> <p>4 A. No.</p> <p>5 Q. And other than the fact that the study was</p> <p>6 expanded, would you agree with me that this is a fair</p> <p>7 and accurate description of the study that you</p> <p>8 initiated in August of 1994?</p> <p>9 A. Yes.</p> <p>10 MR. DRAYCOTT: Objection.</p> <p>11 THE WITNESS: Yeah. And the review wasn't</p> <p>12 expanded. By November, we already had it laid out.</p> <p>13 Our estimate was going to be based on 48, not 60. We</p> <p>14 were taking a sample of 60, but 12 of those weren't</p> <p>15 going to be included in our estimates, so even from</p> <p>16 that standpoint, it's accurate.</p> <p>17 BY MR. COOK:</p> <p>18 Q. Do you recall whether there was any other</p> <p>19 publicity surrounding the beginning of this study?</p> <p>20 MR. BEIMERS: Objection.</p> <p>21 THE WITNESS: I don't recall that.</p> <p>22 BY MR. COOK:</p>	<p>1 did.</p> <p>2 Q. Do you recall any other topics that were</p> <p>3 discussed in these -- in these conversations?</p> <p>4 MR. DRAYCOTT: Objection.</p> <p>5 THE WITNESS: No. Not specifically.</p> <p>6 BY MR. COOK:</p> <p>7 Q. Did any of the pharmacies ask you what it</p> <p>8 was that OIG was doing?</p> <p>9 A. I don't recall that being -- I mean, my</p> <p>10 recollection of the letter was pretty explanatory</p> <p>11 when it came to the purpose of this.</p> <p>12 Q. If any of the pharmacies had asked you for</p> <p>13 additional detail about what it is that you were</p> <p>14 looking into, is that something that you would have</p> <p>15 been free to share with the pharmacies?</p> <p>16 MR. DRAYCOTT: Objection.</p> <p>17 THE WITNESS: Sure.</p> <p>18 BY MR. COOK:</p> <p>19 Q. I mean, there is nothing secret about the</p> <p>20 fact that you were comparing average whole sale</p> <p>21 prices to pharmacy acquisition costs, right?</p> <p>22 A. Correct.</p>

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<p>1 Q. Was OIG investigating the pharmacies for</p> <p>2 any kind of inappropriate conduct, for fraud, as part</p> <p>3 of this investigation?</p> <p>4 A. No.</p> <p>5 Q. I'd like to follow up a little bit about</p> <p>6 some testimony that you gave about the nontraditional</p> <p>7 pharmacies. Just as a preliminary matter, are you</p> <p>8 familiar with what types of products Abbott</p> <p>9 manufactures that are at issue here in this lawsuit?</p> <p>10 A. Not exactly. No.</p> <p>11 Q. We'll get back to it in a little more</p> <p>12 detail later, but I can represent to you that the</p> <p>13 products that are at issue include sodium saline</p> <p>14 solution, dextrose solution, vancomycin, an IV</p> <p>15 antibiotic, sterile water for injection, all of which</p> <p>16 -- and I'll let Justin correct me if I'm wrong -- all</p> <p>17 of which can fairly be described, I think, as</p> <p>18 infusion or IV fluids of some sort or another.</p> <p>19 Would it be your understanding that those</p> <p>20 are the types of products that would be dispensed by</p> <p>21 pharmacies falling within the category of</p> <p>22 nontraditional pharmacies in your study in 1994?</p>	<p>1 chance to show up on our sample. Their belief was</p> <p>2 that these pharmacies typically bought at a lower</p> <p>3 discount than a typical retail pharmacy.</p> <p>4 BY MR. COOK:</p> <p>5 Q. Did you get a feel for whether those lower</p> <p>6 discounts were a product of the nature of the</p> <p>7 pharmacies, or instead a product of the nature of the</p> <p>8 products that those pharmacies were dispensing?</p> <p>9 MR. DRAYCOTT: Objection.</p> <p>10 MS. ALBEE: Objection. Form.</p> <p>11 THE WITNESS: That wasn't part of the</p> <p>12 discussion.</p> <p>13 BY MR. COOK:</p> <p>14 Q. They just said if you include those in</p> <p>15 your sample, they are going to be outliers</p> <p>16 essentially on the low side?</p> <p>17 MR. BEIMERS: Objection.</p> <p>18 THE WITNESS: Yes. They said they are</p> <p>19 going to distort our number. If they show up in our</p> <p>20 sample, we'll end up penalizing -- they were trying</p> <p>21 to protect the retail pharmacies.</p> <p>22 BY MR. COOK:</p>
Page 619	Page 621
<p>1 A. I would say that the injectables did show</p> <p>2 up in much more significant numbers in the</p> <p>3 nontraditional category.</p> <p>4 Q. As I understand it, the nontraditional</p> <p>5 category was included as a separate category</p> <p>6 specifically at the request of Medicaid pharmacy</p> <p>7 directors who attended your August 30 and 31st, 1994</p> <p>8 meeting in Richmond, right?</p> <p>9 A. That is correct.</p> <p>10 Q. Do you recall whether one pharmacy</p> <p>11 director in particular or a group of them were</p> <p>12 particularly interested in breaking out</p> <p>13 nontraditional pharmacies?</p> <p>14 A. I do not recall.</p> <p>15 Q. What was their concern about</p> <p>16 nontraditional pharmacies being included within the</p> <p>17 traditional pharmacies as part of your analysis?</p> <p>18 MR. BEIMERS: Objection.</p> <p>19 THE WITNESS: They were concerned that,</p> <p>20 when we got our list of pharmacy providers, Medicaid</p> <p>21 providers, they would be in that list if we didn't</p> <p>22 identify them and isolate them, they would have a</p>	<p>1 Q. And so you would agree with me that it was</p> <p>2 their expectation that these nontraditional</p> <p>3 pharmacies had deeper discounts than the retail</p> <p>4 pharmacies, right?</p> <p>5 A. Yes.</p> <p>6 Q. Did they quantify that in any way during</p> <p>7 this August 1994 meeting, just how much deeper the</p> <p>8 discounts they expected were for nontraditional</p> <p>9 pharmacies?</p> <p>10 A. No.</p> <p>11 Q. Did anybody describe for you in any degree</p> <p>12 of generality why it was that these nontraditional</p> <p>13 pharmacies got deeper discounts?</p> <p>14 A. I don't recall that being part of the</p> <p>15 discussion.</p> <p>16 Q. Was there anybody of the Medicaid pharmacy</p> <p>17 directors with whom you spoke in August of 1994 who</p> <p>18 disagreed about -- with the expectation that</p> <p>19 nontraditional pharmacies receive deeper discounts?</p> <p>20 A. I don't recall anybody disagreeing.</p> <p>21 Q. As I recall in the reports that you</p> <p>22 published in 1997, and then again in 2002, the OIG,</p>

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<p style="text-align: right;">Page 622</p> <p>1 you writing, laid out the fact that the</p> <p>2 nontraditional pharmacies were excluded from the</p> <p>3 sample precisely because they were expected to have</p> <p>4 larger discounts, correct?</p> <p>5 A. Correct.</p> <p>6 Q. In the comments that you received or the</p> <p>7 conversations that you had with various people after</p> <p>8 those reports were published or while you were</p> <p>9 conducting the study, did anybody take issue with the</p> <p>10 expectation that nontraditional pharmacies received</p> <p>11 deeper discounts than retail pharmacies?</p> <p>12 A. I don't recall anybody taking issue.</p> <p>13 Q. And as you conducted your study and</p> <p>14 reviewed invoice prices, did your empirical analysis</p> <p>15 confirm what you had been told that nontraditional</p> <p>16 pharmacies received deeper discounts than retail</p> <p>17 pharmacies?</p> <p>18 A. Yes.</p> <p>19 Q. And as I understand it, you met again in</p> <p>20 about September of 1995 with these Medicaid pharmacy</p> <p>21 directors or their proxies who came to Richmond</p> <p>22 again, right?</p>	<p style="text-align: right;">Page 624</p> <p>1 pharmacies in the sample. Do I have that correct?</p> <p>2 A. I don't recall that being an issue.</p> <p>3 Q. You also said that it was a great idea to</p> <p>4 exclude the nontraditional pharmacies from the</p> <p>5 sample, to set them aside, and to exclude them from</p> <p>6 the calculations?</p> <p>7 MR. BEIMERS: Objection.</p> <p>8 BY MR. COOK:</p> <p>9 Q. Do you recall -- I take it from that that</p> <p>10 you agreed with the notion of separating them out and</p> <p>11 excluding them from the overall calculations?</p> <p>12 A. I did after we analyzed the data.</p> <p>13 Q. All right. So you accepted it as a</p> <p>14 possibility, looked at the data, and then empirically</p> <p>15 determined whether the expectations of these pharmacy</p> <p>16 directors was true that it would skew the results by</p> <p>17 including the nontraditional pharmacies, correct?</p> <p>18 A. Yes.</p> <p>19 Q. What about the data caused you to believe</p> <p>20 that the nontraditional pharmacies received deeper</p> <p>21 discounts than the retail pharmacies?</p> <p>22 A. When you go look at the results. I mean,</p>
<p style="text-align: right;">Page 623</p> <p>1 A. Yes.</p> <p>2 Q. Am I correct that the data that you</p> <p>3 reported to those Medicaid pharmacy directors in</p> <p>4 September of 1995 confirmed what they expected to</p> <p>5 learn with respect, in general, to the difference</p> <p>6 between AWP's and acquisition costs?</p> <p>7 MR. DRAYCOTT: Objection.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MR. COOK:</p> <p>10 Q. And specifically as to nontraditional</p> <p>11 pharmacies, the deeper discounts that you reported to</p> <p>12 these pharmacy directors from Medicaid also confirmed</p> <p>13 their belief that there would be deeper discounts in</p> <p>14 that nontraditional pharmacy segment, correct?</p> <p>15 A. Correct.</p> <p>16 MR. DRAYCOTT: Objection.</p> <p>17 BY MR. COOK:</p> <p>18 Q. You had said in day one of your deposition</p> <p>19 that one of the reasons for pulling the</p> <p>20 nontraditional pharmacies out of the analysis was</p> <p>21 because of criticisms that had been leveled at</p> <p>22 earlier studies that included those nontraditional</p>	<p style="text-align: right;">Page 625</p> <p>1 almost every case the nontraditional stratum had a</p> <p>2 bigger discount. And I don't know if that was the</p> <p>3 case in every case, but it was pretty prevalent. And</p> <p>4 in some cases, the discounts were substantially</p> <p>5 significantly more.</p> <p>6 Q. In the 90 percent or greater range, would</p> <p>7 it be fair to say?</p> <p>8 A. Well, if you were looking at the</p> <p>9 multisource drugs with no pull, but I'm just talking</p> <p>10 about when you go by that brand and generics --</p> <p>11 Q. And this may be a good time to turn to</p> <p>12 that, but in terms of distinguishing drugs and</p> <p>13 grouping drugs, I take it what you're telling me is</p> <p>14 that from your empirical review of the data back in</p> <p>15 1994, you saw differences between the way brand drugs</p> <p>16 were priced with respect to AWP and the way generic</p> <p>17 drugs were priced with respect to AWP, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And then did you also see as a subset of</p> <p>20 that differences between the way the drugs dispensed</p> <p>21 by nontraditional pharmacies, those generics differed</p> <p>22 from the generics dispensed by retail pharmacies?</p>

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1 A. I don't know about that. What I -- what I  
2 recall about going painstakingly over every one of  
3 those rows of data, that the injectables seemed to  
4 have large discounts. And it was a challenge to know  
5 whether you were using the correct units.

6 Q. Could you explain that to me? How is --  
7 how is that? What was the challenge there?

8 A. Well, I went back and reviewed everything  
9 where the discount was over a certain -- I don't  
10 remember what percent I used, or under a certain.  
11 And without a doubt, I had to go back and look at  
12 more NDCs that turned out to be injectables than  
13 anything else.

14 And part of the problem -- it was even a  
15 challenge to go back -- I used the Red Book as my  
16 reference. What they would show as the number of  
17 units for a particular NDC. That was the challenge,  
18 was getting -- making sure you were using the right  
19 units, because if I remember right at '94, we had  
20 a -- I don't think we had the package price. I think  
21 we had the unit price. I think we had to convert  
22 everything to unit price to be able to compare it to

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1 AWP.

2 So the challenge, when you got to the  
3 injectables, was there might be, say, a thousand  
4 milligrams but it's -- are there 10 of them in the  
5 package or not. And that was -- and ultimately, what  
6 proved to be the most reliable source for me was to  
7 go to the actual invoice, and see -- read the  
8 description of what the quantity was on that invoice.  
9 I couldn't necessarily rely on what the Red Book  
10 showed, or I think it was in 2000, '99 review, I was  
11 actually trying to use First DataBank's quantity for  
12 each NDC. But I spent more time on injectables than  
13 anything else in my review, investigating odd  
14 numbers.

15 Q. Because if it were a thousand milliliter  
16 bag, you could be off by a factor of a thousand if  
17 there were no --

18 A. 20 or -- I mean, the packaging of those is  
19 -- it's not the same from one reference source to  
20 another. And plus, I had to look up a lot of them  
21 because there were really significant discounts on  
22 some of them.

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1 BY MR. COOK:

2 Q. When you say significant discounts --

3 A. 90 plus percent.

4 Q. The analysis that you conducted of the  
5 invoices that were pulled in 1994, am I correct from  
6 my review of the spreadsheets that you had largely  
7 completed the analysis of those invoices and created  
8 the spreadsheets and done the basic calculations by  
9 April or May of -- of 1995? Or would you have to go  
10 back and look at the documents to see?

11 A. Yeah. I don't -- I don't remember.

12 Q. Okay. You had certainly collected all  
13 your data by that point, right?

14 A. I don't even know the answer to that for  
15 sure.

16 Q. But the documents would show presumably?

17 A. Yes.

18 Q. And just so we are clear, when you're  
19 referring to injectables, can you give me some  
20 examples of what types of drugs you're talking about  
21 with -- or products you're talking about with respect  
22 to injectables?

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1 A. Saline solution.

2 Q. So dextrose solution, for example, would  
3 be an injectable? Would you agree that sterile water  
4 would be an injectable?

5 A. Yes.

6 Q. If it were an IV bag, an IV solution  
7 antibiotic would be an injectable?

8 A. Yes.

9 Q. Do you know who Dr. Bruce Vladeck is?

10 A. He was the administrator at CMS for a  
11 little while.

12 Q. He was the administrator from 1992 to  
13 1997. Does that sound right?

14 A. Close enough.

15 Q. Close enough. He testified earlier in  
16 this case, and testified that with respect to  
17 infusion products, injectable products, such as  
18 sodium saline solution, that his expectation was that  
19 he would see discounts of 99 percent obtainable  
20 through GPOs. Would that be consistent with the  
21 empirical data that you reviewed in 1994?

22 MR. DRAYCOTT: Objection.

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<p style="text-align: right;">Page 630</p> <p>1 THE WITNESS: I don't -- I don't know that</p> <p>2 I looked at the data sufficiently to be able to draw</p> <p>3 that conclusion.</p> <p>4 BY MR. COOK:</p> <p>5 Q. Would it surprise you to see discounts in</p> <p>6 the 90 percent plus range for these injectables?</p> <p>7 A. No. It was very common.</p> <p>8 Q. Did you find that these products tended to</p> <p>9 be expensive products?</p> <p>10 MR. DRAYCOTT: Objection.</p> <p>11 THE WITNESS: No. I don't think they</p> <p>12 were.</p> <p>13 BY MR. COOK:</p> <p>14 Q. So a bag of saline, based upon your review</p> <p>15 of actual tens of thousands of pages of actual data,</p> <p>16 what would you expect to pay for a bag of saline</p> <p>17 solution?</p> <p>18 A. Not much.</p> <p>19 MS. ALBEE: Objection. Form.</p> <p>20 BY MR. COOK:</p> <p>21 Q. 70 cents, a dollar?</p> <p>22 A. Oh, I don't -- it's been too long.</p>	<p style="text-align: right;">Page 632</p> <p>1 of look at as commencing an investigation?</p> <p>2 MR. BEIMERS: Objection.</p> <p>3 THE WITNESS: In this case, no. And at</p> <p>4 that time no. When we do -- we do audit start</p> <p>5 notices a lot currently. I don't know that we did</p> <p>6 them always at that time.</p> <p>7 BY MR. COOK:</p> <p>8 Q. Certainly by August 30th of 1994, in this</p> <p>9 case, you had commenced your audit, correct?</p> <p>10 A. Correct.</p> <p>11 Q. Is there a difference, and I don't know</p> <p>12 the answer, is there a difference between an audit</p> <p>13 and an investigation in OIG parlance?</p> <p>14 A. Yes.</p> <p>15 Q. What is the difference?</p> <p>16 A. Well, we have in addition to the Office of</p> <p>17 Audit Services, we have an Office of Investigations.</p> <p>18 These are all special agents who are criminal</p> <p>19 investigators who work on criminal as well as civil</p> <p>20 cases. And a lot of times in conjunction with the</p> <p>21 Department of Justice.</p> <p>22 Q. And what's an audit as opposed to an</p>
<p style="text-align: right;">Page 631</p> <p>1 Q. I'm told that we need to change the tape,</p> <p>2 so it's a good time for a break.</p> <p>3 THE VIDEOGRAPHER: This concludes volume</p> <p>4 II, tape three, in the deposition of Paul Chesser.</p> <p>5 Off the record at 4:29.</p> <p>6 (Recess.)</p> <p>7 THE VIDEOGRAPHER: Here begins volume II,</p> <p>8 tape four, in the deposition of Paul Chesser. On the</p> <p>9 record at 4:34.</p> <p>10 BY MR. COOK:</p> <p>11 Q. Just in terms of timing, so I can place us</p> <p>12 in time, Mr. Chesser, the OAS investigation into the</p> <p>13 difference between average wholesale price and</p> <p>14 pharmacy acquisition cost was begun sometime prior to</p> <p>15 August of 1994, correct?</p> <p>16 A. August of '94 is when we had the meeting</p> <p>17 with the state folks in Richmond, so sometime barely</p> <p>18 before that.</p> <p>19 Q. All right. So I'm just trying to get sort</p> <p>20 of a starting point of when the investigation</p> <p>21 commenced. Is there a formal commencing of an</p> <p>22 investigation, a document or an event that you sort</p>	<p style="text-align: right;">Page 633</p> <p>1 investigation?</p> <p>2 A. An audit is just looking to see whether</p> <p>3 some criteria has -- is being complied with or not.</p> <p>4 Not necessarily whether it's legal or illegal. It's</p> <p>5 just whether it's economic -- economical and</p> <p>6 efficient way to provide services, or something along</p> <p>7 those lines.</p> <p>8 Q. So you're still investigating it in the</p> <p>9 sense that you're looking at facts, but you're not</p> <p>10 necessarily investigating it because someone has made</p> <p>11 an accusation of improper conduct?</p> <p>12 A. Correct. We are not looking for criminal</p> <p>13 or civil.</p> <p>14 Q. Do you have any procedure that you -- that</p> <p>15 you use when you come across evidence of fraud or</p> <p>16 abuse in the course of an audit?</p> <p>17 A. Yes. I personally haven't had to deal</p> <p>18 with that, but we are supposed to contact OI</p> <p>19 immediately because the rules of evidence are</p> <p>20 different when you're in a criminal environment than</p> <p>21 they are during an audit.</p> <p>22 Q. In the course of your 1994 investigation,</p>

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